IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CARY HENDRICK, *et al.*, *Plaintiffs*, v. DONALD CALDWELL, *et al.*, *Defendants*.	Civil Action No.: 7:16-cv-00095 (GEC)

JOINT MOTION TO VOLUNTARILY DISMISS CAUSES OF ACTION TWO, FOUR, AND SIX WITHOUT PREJUDICE

Plaintiffs Cary Hendrick, Bryan Manning, Ryan Williams, Richard Deckerhoff, and Richard Eugene Walls ("Plaintiffs"), by counsel, and Defendants Donald Caldwell and Michael Herring ("Defendants"), by counsel, jointly move this Honorable Court for entry of an order granting voluntary dismissal without prejudice pursuant to Rule 41(a)(1)(ii) of the *Federal Rules of Civil Procedure* ("Fed. R. Civ. P.") as to Causes of Action Two, Four, and Six of Plaintiffs' Complaint only, and, in support thereof, state as follows:

1. On March 3, 2016, Plaintiffs filed suit against Defendants, the elected Commonwealth Attorneys for the City of Roanoke and the City of Richmond, respectively, as representatives of all other Commonwealth's Attorneys in Virginia. Plaintiffs allege that the Virginia interdiction statutes, Va. Code §§ 4.1-305, 4.1-322 and 4.1-333, (collectively, "the Interdiction Statute") violates various provisions of the U.S. Constitution and the Constitution of Virginia as applied to Plaintiffs. Plaintiffs seek declaratory and injunctive relief pursuant to 28

U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983, and Fed. R. Civ. P. Rules 57 and 65 and state in the Complaint their intent to seek plaintiff class certification and defendant class certification pursuant to Fed. R. Civ. P. Rule 23.

2. Plaintiffs' Complaint sets forth the following Causes of Action pursuant to the Constitution of Virginia:

a. CAUSE OF ACTION TWO: Punishment of Plaintiffs' status as homeless individuals addicted to alcohol is cruel and unusual punishment in violation of Plaintiffs' rights under Article I, Section 9 of the Constitution of Virginia.

b. CAUSE OF ACTION FOUR: The Interdiction Statute violates Plaintiffs' due process rights under Article I, Section 11 of the Constitution of Virginia.

c. CAUSE OF ACTION SIX: The Interdiction Statute is unconstitutionally vague in violation of Article I, Section 11 of the Constitution of Virginia.

3. On August 25, 2016, Plaintiffs' Counsel and Defendants' Counsel conferred and jointly agreed to seek voluntary dismissal of the above-referenced Virginia Constitutional Causes of Action Two, Four, and Six without prejudice pursuant to Fed. R. Civ. P. Rule 41(a)(1)(ii).

4. This Motion in no way relates to any other Cause of Action made in Plaintiffs' Complaint.

Respectfully Submitted,

By: s/ Mary Frances Charlton

Mary Frances Charlton, VSB #85387
Attorney for Plaintiffs
Legal Aid Justice Center
1000 Preston Ave., Ste. A
Charlottesville, Virginia 22903
(434) 529-1839
(434) 977-0558 (Fax)
Email: maryc@justice4all.org

By: s/ Margaret Hoehl O’Shea
Margaret Hoehl O’Shea, AAG, VSB #66611
Attorney for Defendants
Criminal Justice & Public Safety Division
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 225-2206
(804) 786-4239 (Fax)
Email: moshea@oag.state.va.us

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2016, I electronically filed the foregoing Joint Motion to Voluntarily Dismiss Without Prejudice Causes of Action Two, Four, and Six with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Margaret Hoehl O'Shea
Assistant Attorney General
Criminal Justice & Public Safety Division
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
moshea@oag.state.va.us

Nancy Hull Davidson
Assistant Attorney General
Criminal Justice & Public Safety Division
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
ndavidson@oag.state.va.us

And I hereby certify that I have mailed the document by United States Postal Service to the following non-filing user: N/A

By: /s/ Mary Frances Charlton
Mary Frances Charlton, VSB #85387
Attorney for Plaintiffs
Legal Aid Justice Center
1000 Preston Ave., Ste. A
Charlottesville, Virginia 22903
(434) 529-1839
(434) 977-0558 (Fax)
Email: maryc@justice4all.org